

**FILED**

**JUL -1 2019**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

In re:

GARY ALLAN BRADY,  
and ROSE MARIE BRADY,

Debtors.

Case No. 19-10640-A-13

SAH-2

**MEMORANDUM**

Argued and submitted on June 27, 2019

at Fresno, California

Honorable Fredrick E. Clement, Bankruptcy Judge Presiding

Appearances: Susan A. Hemb, Hemb Law Group, for debtors  
Gary Allan Brady and Rose Marie Brady;  
Sarah R. Velasco for Chapter 13 trustee  
Michael H. Meyer

1 Debtors Gary Brady and Rose Brady ("Bradys") move for  
2 confirmation of their Chapter 13 plan. Chapter 13 trustee Michael H.  
3 Meyer opposes confirmation, arguing that the Bradys are not devoting  
4 all of their "projected disposable income" to payment of their  
5 unsecured creditors. There are two issues: (1) whether the debtors'  
6 historical charitable giving supports a \$700 deduction on Line 31 of  
7 Form 122C-2; and (2) debtor's entitlement to a deduction of \$25 for a  
8 cell phone expense on Line 23 of Form 122C-2.

9 I. LAW

10 Chapter 13 debtors must propose and confirm a plan for repayment  
11 of their creditors. 11 U.S.C. § 1321. The plan must comply with  
12 § 1325. The debtor bears the burden of proof and the quantum of proof  
13 is preponderance of the evidence. *In re Wolff*, 22 B.R. 510, 512  
14 (B.A.P. 9th Cir. 1982).

15 If the trustee or the holder of an allowed unsecured claim  
16 objects, the plan must pay allowed unsecured creditors in full or the  
17 plan must devote all of the debtors' "projected disposable income"  
18 received in the "applicable commitment period" for payment of  
19 unsecured creditors. 11 U.S.C. § 1325(b)(1)(B). For above median  
20 income debtors, "projected disposable income" is calculated by  
21 determining the debtors' "current monthly income," 11 U.S.C. §  
22 101(10A) (a six month prepetition average of all income received,  
23 except Social Security benefits) and then deducting standardized  
24 monthly living expenses, as well as the secured priority debts  
25 averaged over the 60 months following the petition filing date. 11  
26 U.S.C. §§ 1325(b)(2), (3), 707(b)(2)(A)(ii)-(iv).

1    **II.    DISCUSSION**

2        **A.       Charitable contributions**

3        Among the deductions that the debtor may claim are charitable  
4        contributions "not to exceed 15% of gross income." 11 U.S.C. §  
5        1325(b)(2)(A)(ii). The charitable giving deduction is limited to  
6        amounts actually made by the debtor. *In re Gamble*, No. 11-80131, 2011  
7        WL 2971406, at \*3 (Bankr. M.D.N.C. June 15, 2011) (allowing a \$600 per  
8        month deduction actually being made in the year of the petition  
9        notwithstanding giving of \$171.25 per month in the preceding year); *In*  
10       *re Steele*, No. 09-21218, 2010 WL 4791837, at \*3 (Bankr. D. Wyo. Nov.  
11       18, 2010).

12       The Bradys have not sustained the burden of proof as to  
13       charitable contribution expenses of \$700 per month. Official Form  
14       122C-2, Line 31, May 8, 2019, ECF # 30. The Statement of Financial  
15       Affairs makes the following representations about charitable giving:  
16       2016 \$6,333 (\$528/month); 2017 \$6,5820 (\$548 per month) and "YTD"<sup>1</sup>  
17       \$5,119 (\$427/month). Statement of Financial Affairs No. 14, February  
18       25, 2019, ECF # 1. In contrast, the Bradys' declaration in support of  
19       confirmation suggests charitable giving for January through June 2018  
20       of \$676 per month<sup>2</sup> and charitable giving for January through June 2019  
21       giving of \$338 per month.<sup>3</sup> The court finds that the debtors have a

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23       <sup>1</sup> Since the petition was filed February 25, 2019, and the debtors claim giving  
24       of \$5,118.96 the court presumes that the "YTD" is an error and that the  
25       debtors intended to recite their 2018 giving history.

26       <sup>2</sup> Brady decl. exhibit pp. 1-2 for 2018 giving, June 24, 2019, ECF # 57  
27       (\$3,691.03 on page 1 + \$365.64 on page 2 equals \$4,056.67 divided by six  
28       months equals \$676.11). There is no evidence of the debtors' charitable  
giving in the second half of 2018.

<sup>3</sup> *Id.* at pp. 4-5 (\$1,177.84 on p. 4 + \$850.46 on p. 5 equals \$2,028.30 divided  
by six months equals \$338.05).

1 sustained pattern of charitable giving in the amount of \$500 per  
2 month.<sup>4</sup> As a result, the debtors have not sustained their burden of  
3 proof for a charitable deduction of \$700 per month.

4 **B. Cell phone**

5 Debtors may also deduct telecommunication expenses for business  
6 cell service "to the extent necessary for health and welfare" and for  
7 unreimbursed expenses for "the production of income." Official Form  
8 B122-2, Line 23. Excluded as basic home telephone and cell phone  
9 service. *Id.*

10 Here, the debtors claim a \$25 monthly expense. The debtor Rose  
11 Brady and contends that she is "often required to utilize [her] cell  
12 phone for work purposes." Brady decl., June 20, 2019, ECF # 56. From  
13 the phrase "often required to utilize my cell phone" the court infers  
14 that this is the debtor's personal cell phone and, thus, that phone  
15 expense falls within the basic cell phone expense exclusion.  
16 Moreover, even without such an inference, the debtor's failure to  
17 proffer evidence of the amount of that expense would preclude  
18 granting the motion.

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27 <sup>4</sup> That amount is calculated as follows: 2016 tithes \$6,333, 2017 tithes \$6,582  
28 and 2018 tithes \$5,119 aggregate \$18,034, divided by 36 months is \$500.94 per month.

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**Instructions to Clerk of Court**  
**Service List – Not Part of Order/Judgment**

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC.

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